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BEFORE THE
TRADE POLICY STAFF COMMITTEE
WASHINGTON, D.C.

SAFEGUARD ACTION

Imports of Certain Steel Products

COMMENTS ON PRESIDENTIAL ACTION
REGARDING LONG PRODUCTS No. 9 (HOT-ROLLED BAR AND
LIGHT SHAPES) and No.10 (COLD-FINISHED BAR)

Submitted on Behalf of
Canadian Producers

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Executive Summary

This Section 201 investigation of steel has been remarkable not simply for its large scope, but also for the fact that the U.S. steel industry, which has formed a NAFTA-based working relationship with the Canadian steel industry, and its Congressional supporters, have repeatedly asked that Canada not be included in any remedy, particularly any remedy for hot-rolled bar and light shapes (hereafter "hot-rolled bar") and cold-finished bar.

Not surprisingly, the facts elicited from this investigation support the U.S. industry's assertion that Canadian imports have not contributed importantly to the problems facing the U.S. industry. Nevertheless, based on an error in interpreting the NAFTA and its Implementation Act, four members of the U.S. International Trade Commission have found that Canadian imports of hot-rolled bar and cold-finished bar have contributed importantly to serious injury to the domestic industry. The Canadian producers of hot-rolled bar and cold-finished bar respectfully maintain that when the President analyzes anew - as he is required by law to do - the facts based on the proper application of the NAFTA criteria the President will find that Canadian imports did not contribute importantly to any serious injury or threat thereof to the domestic industry, and thus should not be included in any global remedy.

By exempting Canadian imports, the President will avoid having to pay immediate compensation to Canada, as required by the NAFTA.

Canada does not have excess steelmaking capacity, and so should not be the target of the President's effort to reduce global overcapacity.

The following comments are offered to assist the President in determining what action to take pursuant to Section 203 of the Trade Act of 1974[1] with respect to imports of hot-rolled bar and light shapes and cold-finished bar from Canada. References are made to the U.S. International Trade Commission's steel investigation pursuant to Section 202 of the Trade Act of 1974[2] and the Commission's Confidential Business report dated December 2001.[3]

The President Should Take No Action With Respect to Imports From Canada for Four Reasons

First, the U.S. steel industry, its workers, and its Congressional supporters, while asking for temporary relief from other imports, have consistently and publicly maintained that no action should be taken with respect to imports from Canada. The reason for their position is not only a belief that Canadian imports are not causing injury, but their realization that imposing any restrictions on imports from Canada will actually harm, not help, the U.S. industry, which is actually the integral component of a growing North American steel industry. If the President were to take action - however temporary - against imports from Canada, it would be against the wishes of the same people on whose behalf this

[1] 19 U.S.C.§ 2253.

[2] 19 U.S.C.§ 2252.

[3] Inv. No. TA-201-73, USITC Pub. 3479, December 2001, hereinafter referred to as "Steel."

safeguard investigation was instituted. It is respectfully submitted that safeguard relief should not be used against an industry it is designed to protect.

Second, the President is required by both the North American Free Trade Agreement[4] and Section 312 of the North American Free Trade Agreement Implementation Act[5] to exclude NAFTA imports from any safeguard action if he determines that they do not account for a substantial share of total imports or if they do not contribute importantly to serious injury. This latter test is defined in Article 802, subparagraph 2(b) of the NAFTA in part as follows:

> imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

This same definition appears in Section 311 of the NAFTA Implementation Act, which governs the U.S. International Trade Commission's safeguard investigations with respect to NAFTA imports.[6]

In applying the NAFTA provision, the U.S. International Trade Commission has made an erroneous determination with respect to imports of two long products from Canada. A four-member majority of the Commission found that imports of hot-rolled bar and cold-finished bar from Canada had "contributed importantly" to serious injury in spite of virtually unanimous testimony to the contrary by

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[4] Hereinafter referred to as "NAFTA."

[5] 19 U.S.C. § 3372.

[6] 19 U.S.C. § 3371(b)(2).

the U.S. industry, and recommended that they be included in any action taken by the President against imports of those products generally. We submit that the Commission majority was wrong in its application of the law, and therefore in its conclusion, and that a correct application of the NAFTA test by the President will yield a contrary result.

Third, the NAFTA requires that if the President includes imports from Canada in any global safeguard action, the United States is obligated to provide trade concessions to Canada as compensation regardless of how long the action lasts.[7] The compensation requirement applies to NAFTA trade even though the United States is not required to immediately compensate non-NAFTA countries. If the United States and Canada are unable to agree on compensation, Canada may legitimately take action that has trade effects substantially equivalent to the action taken against it.

Fourth, unlike other steel producing countries, Canada - like the United States - does not have overcapacity in steel making. It thus should not be the target of Presidential efforts to reduce steel making capacity around the world.

I. The Domestic Industry Does Not Want Protection from Canadian Imports

In determining what action to take, the President is supposed to

> take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide

[7] NAFTA Article 802(6). The United States is not obligated to compensate non-NAFTA countries unless the trade action extends beyond three years. WTO Agreement on Safeguards, Article 8.3.

greater economic and social benefits than costs.[8]

The record compiled by the Commission during its investigation shows that restrictions on Canadian imports will not accomplish the above-stated goal. It was for good reason that the chairman of the U.S. Congressional Steel Caucus,[9] the president of the United Steelworkers of America,[10] and the domestic industry itself[11] all agreed that imports from Canada were not contributing importantly to the serious injury suffered by the domestic industry. These U.S. steel industry representatives all understand how essential imports from Canada are to the health of the U.S. steel industry and the U.S. economy. They understand the concept of the integrated North American steel industry.[12] And they understand that imports from Canada should not be restricted.

Congressman Phil English, Chairman of the U.S. Congressional Steel Caucus, and speaking on behalf of the U.S. industry, may have stated it most clearly when he testified:

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[8] 19 U.S.C. § 2253(a)(1)(A).

[9] See Transcript of Commission hearing on injury ("Tr."), at 381-82 (Sept. 19, 2001) (testimony of Congressman Phil English).

[10] See Tr. at 88-89 (Sept. 17, 2001) (testimony of Leo W. Gerard).

[11] See Post-hearing brief on injury of Minimill 201 Coalition (Long Products), vol. 5, Exh. 5 (answering Commissioner Koplan's question regarding Section 311 of the NAFTA Implementation Act).

[12] Subsequent to the Commission's determination, the president and CEO of the American Iron and Steel Institute expressly recognized the emergence of the integrated North American market. See Statement of Andrew G. Sharkey, III, AISI press release (Oct. 23, 2001), found in www.steel.org/news/index.html ("The Institute's North American membership recognizes that there is growing integration in the NAFTA steel market and that NAFTA steel producers share many common trade challenges and concerns.").

> {I}t is in the interest of U.S. steel producers, their employees, steel industry suppliers and customers to ensure that North American steel markets remain integrated by excluding Canada from any potential injury determination under this Section 201 investigation. In my view, U.S. steel exports to Canada have been growing much more quickly than Canadian exports to the U.S. and a relative balance exists in overall steel trade between these NAFTA partners.[13]

This testimony is supported by the facts. The integrated U.S.-Canada steel market has provided real, tangible benefits for the U.S. industry. Overall, there has been a balance in Canadian-U.S. steel trade, with each country exporting about $3.5 billion worth of steel products to each other and the U.S. share of the integrated Canada-U.S. market growing much faster than Canada's share.[14] Moreover, the scope of this integrated market is huge: the daily cross-border shipments of hot-rolled bar and cold-finished bar from Canada to the United States number on average over 100 truckloads.[15] Any restriction imposed on this trade would be highly disruptive to U.S. steel users and many U.S. producers themselves and would likely undo the favorable trade relationship that has developed over more than a decade.

Leo Gerard, President of the United Steel Workers of America, echoed Congressman English's testimony, even after the Commission had found injury from Canadian imports: "We continue to believe that in the view of the enormous integration between the Canadian and U.S. economies and

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[13] Tr. at 381 (Sept. 19, 2001) (testimony of Congressman English).

[14] Tr. at 388-89 (Sept. 19, 2001) (testimony of Tony Valeri).

[15] See Pre-hearing Brief on Remedy filed at the Commission by Cameron & Hornbostel LLP on behalf of certain Canadian steel producers at 5 (October 29, 2001).

steel industries and our governments' ability to negotiate their differences that Canada really is not part of the trade problem facing the United States steel industry . . . ."[16]

Based on their testimony and briefing, the domestic hot-rolled and cold-finished bar producers themselves believe they have not been injured by Canadian imports. More importantly, these same domestic producers did not ask for, nor do they want, any action that would ostensibly help them make a positive adjustment to import competition from Canada because there is no harmful competition from such imports.[17] Who is in a better position to judge whether they are being injured by imports from Canada than the U.S. producers and workers whom the law is designed to protect?

Both in their briefs and in testimony to the Commission over the course of the Commission's investigation, the domestic industries have made it clear that it is the low priced imports from non-NAFTA countries that have injured them, and that Canadian imports should be excluded from the Commission's affirmative determinations.[18] Furthermore, they have testified that any remedy that

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[16] See Transcript of Commission hearing on remedy ("Tr. Remedy") at 108-09 (November 6, 2001) (testimony of Leo Gerard, President of United Steelworkers of America).

[17] Only one company, North Star Steel, separated itself from the testimony of the rest of the industry on this issue. See Tr. Remedy at 499. However, the President must fashion a remedy that helps "the domestic industry," not just one company. The industry as a whole wants Canada excluded from any remedy.

[18] In addressing certain minimill long products, which included hot-rolled bar, the Minimill 201 Coalition (Long Products) stated:

> The Coalition takes the position that the Canadian and U.S. markets are largely integrated and that the surge of imports from non-NAFTA countries has been the most important cause of serious injury.
>
> Canada and Mexico have not played a significant role in adding to the surge of

(continued...)

restricts imports from Canada will harm, rather than help, the U.S. industries the law is supposed to help. These industries recognize that North American steel producers are largely integrated and that steel production has been rationalized over the course of the last ten years due to the U.S.- Canadian Free Trade Agreement and the NAFTA, to the point where there is substantial common ownership of plants on both sides of the border and equal two-way trade worth $7 billion. The record contains overwhelming evidence that imports from Canada do not contribute importantly to serious injury.

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[18](...continued)
imports flooding into the United States over the POI. . . . Moreover imports from Canada at their present level have increased at an appreciably lower rate than non-NAFTA imports.

Accordingly, under Section 311 of the NAFTA Implementation Act . . . , the Commission should find that . . . NAFTA imports of long steel mill products {which include hot-rolled bar}, considered individually or collectively, do not contribute importantly to the serious injury, or threat thereof, caused by imports.

Post-hearing brief (Public) on Injury of Minimill 201 Coalition (Long Products), Vol. 5, Exh. 5. (Oct. 3, 2001)

Similarly, over the course of the hearing on remedy, representatives of the U.S. industry reiterated that any remedy should not target NAFTA parties. For example:

> We also urge, as we did in our prehearing brief on remedy, that the Commission make an express determination that cold-finished steel bar imports from non-NAFTA countries are a substantial cause of serious injury to the domestic industry. We do so to insure that the remedy you recommend for cold-finished steel bar can address the true problem we face, ultra low-priced imports from non-NAFTA countries, without unnecessarily curbing fairly priced imports from Canada and Mexico. As I have previously stated, we see no evidence that Canadian imports are being offered in our market at prices lower than those sought by domestic producers. . . . For these reasons, we would be fully satisfied with your recommending a remedy that would not penalize NAFTA producers, whether by according them an exemption under the treaty or by recognizing the realities of our marketplace.

Tr. Remedy at 504 (testimony of Paul Darling, Corey Steel Company).

These testimonies are only a few examples of the huge, equal two-way trade in steel products between Canada and the United States. The same histories are repeated time and again in different contexts with different parties, but the message is the same: the companies that make up the North American steel industry are inextricably intertwined with one another through investment, common ownership, long-term supply relationships, and rationalized production among related producers. In short, the relationship between the U.S. and Canadian steel industries is one example of the how the two countries have attained their NAFTA objectives: to promote trade and investment between the countries in a manner that would allow producers to become true "North American" producers rather than simply Canadian, U.S. or Mexican producers; by freeing trade and encouraging investment across borders, producers can acquire production facilities in any of the three countries that will promote the most cost-efficient production of their products. Indeed, the record shows that companies on both sides of the border have pursued an investment strategy that was designed to restructure existing production operations to create fully-integrated, efficient North American producers, where facilities on each side of the border are designed to complement, rather than supplement, facilities on the other side of the border.[19]

This global investigation, at both injury and remedy phases, brought out certain crucial facts. First, it is undisputed that the respective steel industries of the United States and Canada have become

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[19] See, e.g., Prehearing Brief (Remedy) of Slater Steel, Inc., at 2 (detailing Slater's acquisition of Atlas Specialty Steel operations in Canada to complement its Indiana facilities, for stainless steel products); Tr. Remedy at 641-42 (testimony of Garry Leach, on behalf of Gerdau MRM Steel) (characterizing his company as "NAFTA investors" with plans to merge Courtice Steel in Canada with Ameristeel "to better serve the integrated North American steel marketplace").

closely integrated through NAFTA and its predecessor. Second, it is also undisputed that this closer integration has resulted in a largely balanced steel trade that has benefited the United States in the form of growth of exports to Canada that has been faster than the growth of steel imports from Canada. Third, as demonstrated above, the U.S. industry has recognized that the true cause of the problem, and thus the target for any remedy, is low-priced imports from non-NAFTA sources. Finally, this increasing integration and the benefits that have arisen therefrom have led the U.S. industry -- including its management, workers and congressional representatives -- to request that any recommended remedy be one that not restrain Canadian imports. These factual findings and the urging of the domestic industry itself compel a remedy that does not restrain Canadian imports.

II. The NAFTA Rules Require The President to Exclude Canadian Imports from Any Safeguard Action

In deciding whether to take any safeguard action with respect to an imported article from a NAFTA country, the NAFTA Implementation Act requires the President to determine two things:

> (1) whether imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and
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> (2) whether imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.[20]

Further, both the NAFTA itself and Section 311(b)(2) of the NAFTA Implementation Act state that a NAFTA country normally shall <u>not</u> be considered to contribute importantly to serious injury,

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[20] NAFTA Implementation Act § 311(a), 19 U.S.C.§ 3371(a). The language is virtually identical to that of Article 802.1 of the NAFTA.

or the threat thereof, "if the growth rate of imports from such country during the period in which an injurious increase{[21]} in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period."[22] In evaluating whether imports from a NAFTA country contribute importantly to injury or threat of injury, the Commission is directed to consider "such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries."[23] Although it is conceded that according to the first NAFTA criterion Canada was among the top five suppliers of hot-rolled bar and light shapes (hereafter, "hot-rolled bar") for the investigation period 1998 to 2000, it is submitted that, contrary to the Commission majority's conclusion, Canadian imports did not "contribute importantly" to injury or threat of injury to the domestic industry, the second NAFTA criterion.

The four Commissioners voting in the affirmative with respect to imports from Canada used an erroneous standard with respect to the second NAFTA criterion in arriving at their conclusion. The majority acknowledged that the "percentage increase in imports from Canada was lower than that for imports from all sources"[24] but then ignored that statutory standard in favor of a new theory to support their finding that imports from Canada contributed importantly to the serious injury caused by imports.

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[21] Although the U.S. statute refers to an injurious increase in imports, the language in Article 802.2(b) of the NAFTA refers to an "injurious surge." A surge is defined in NAFTA Article 805 as "a significant increase in imports over the trend for a recent representative base period."

[22] NAFTA Article 802.2(b) and 19 U.S.C. § 3371(b)(2).

[23] 19 U.S.C. § 3371(b)(2). See, e.g., Circular Welded Carbon Quality Line Pipe, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999), at I-18; Certain Steel Wire Rod, at I-18 and I-31; Wheat Gluten, Inv. No. TA-201-67, USITC Pub. 3088 (Mar. 1998), at I-19.

[24] Steel, Vol. I at 106.

The majority opined that "[b]ecause imports from Canada began from a much higher base than imports from any other country, we do not believe that the Canadian increase is appreciably lower than the increase in imports from all sources."[25] This is not the statutory standard. In fact it is merely a different way of stating the first NAFTA criterion. The second criterion is a comparison of rates of growth, not relative proportions. Furthermore, the erroneous standard fails to take into account that imports of Canadian steel are expected to be at "a much higher base," reflecting the extensive integration of the steel industry in North America - as fostered by the U.S.-Canada Free Trade Agreement and now the NAFTA. Without explanation,[26] the majority's approach writes out of the law the essential provision of Section 311(b)(2) the NAFTA Implementation Act,[27] and so it must be rejected.

Furthermore, none of the factors cited by the Commission to support the finding that imports from all sources caused serious injury apply to Canadian imports. For example, the Commission cited "the largest increase in hot-rolled bar imports" in 1998 - 29.5% - as a factor;[28] but Canadian imports increased by only 6.7%,[29] which was less than the increase from the preceding year. The Commission also relied on the fact that during "1998, the imports consistently undersold the domestically-produced

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[25] Id.

[26] The statute does allow the Commission (and the President) some latitude in applying the growth rate test by using the word "normally." However, the Commission majority gave no explanation for their departure from the test, and so we must conclude that they ignored it.

[27] 19 U.S.C.§ 3371(b)(2).

[28] Steel Vol. I at 101.

[29] Steel Vol. II, Table LONG-5 at LONG-15.

product."[30] But according to the Commission's data, Canadian imports oversold the U.S. product during the investigative period, and in 1999 particularly by exceedingly large margins.[31] Likewise, although the Commission recited that in 1998 the domestic "industry also lost 4.1 percentage points of market share to the imports,"[32] Canadian imports only accounted for 0.2 percentage points of that share.[33] Further, the Commission cited a resumption of underselling by imports in the first half of 2000, leading to an increase of 1.7 percentage points of market share.[34] However, Canadian imports did not increase their share of the market by one iota in that period.[35] Thus, none of the reasons given by the Commission for their affirmative finding of injury from imports apply in the case of imports from Canada. The four-member majority's decision regarding Canadian imports therefore must be rejected.

Fortunately, not only is the President not required to adopt the Commission's finding regarding NAFTA imports, he is obligated to make his own determination, using the NAFTA criteria anew.[36]

It is submitted that if properly applied, the NAFTA criteria will lead to a negative finding of injury from Canadian imports. Consider the facts: during the past five calendar years, total imports of

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[30] Steel Vol. I at 101.

[31] Steel Vol. II, Table LONG-90 at LONG-102.

[32] Steel Vol. I at 102.

[33] Steel Vol. II, Table LONG-70 at LONG-81.

[34] Steel Vol. I at 102.

[35] Steel Vol. II, Table LONG-70 at LONG-81.

[36] 19 U.S.C. § 3372.

hot-rolled bar increased by 52.48%, from 1,660,123 short tons in 1996, to 2,531,409 short tons 2000.[37] Over the same period, Canada's imports increased by only 22.7%, less than half of the growth rate for all imports.[38]

This distinction in the trends of import growth for Canadian hot-rolled bar versus all other imports can be further illustrated by the two sub-periods of growth within the five year period. From 1996 to 1998, the growth rate for all imports was 41.16%. Again from 1999 to 2000, imports from all countries increased by 11.89%.[39] Canadian imports, in contrast, grew by only 14.66% and 0.85% respectively over the two growth periods, an "appreciably lower" growth rate than total imports by any measure.[40] It is also notable that within the first period of increased imports, from 1996 to 1998, the annual growth rate for all imports increased from 8.99% to 29.52%, while at the same time, the annual growth rate of imports from Canada actually decreased from 7.41% to 6.75%. Furthermore, at a time when the Commission found total imports had their "largest increase," almost 30% in 1998, imports from Canada increased by only 6.7%. These figures illustrate clearly that Canadian imports of hot-rolled bar grew at a rate appreciably lower than the rate for all imports combined and could not have "contributed importantly" to serious injury found by the Commission.[41] See Chart 1.

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[37] See Steel, Vol. II, Table at LONG-15.

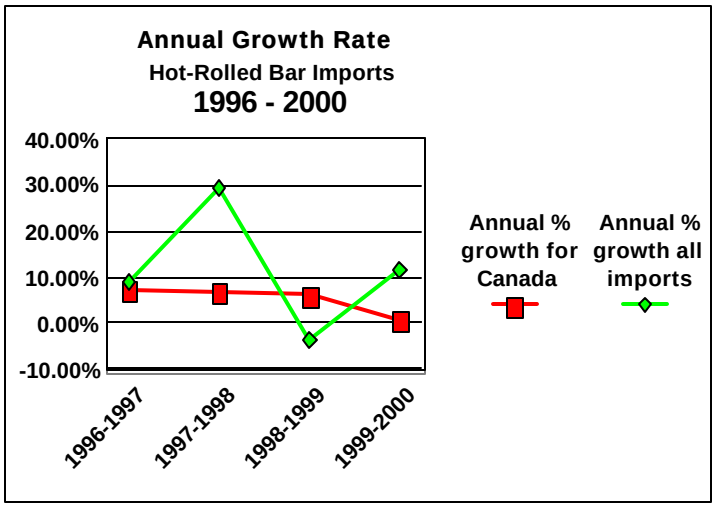
[38] See id.

[39] See id.

[40] See id.

[41] See id.

Chart 1



Source: U.S. International Trade Commission's Dataweb Site.

As to the question of "change in import share," Canada's share of total imports has decreased over the past five years, declining from 56.6% in 1996 to 45.6% in 2000.[42] Furthermore, the level of imports from Canada has not changed dramatically over the past five years, from just under 1 million tons in 1996 to just under 1.16 million tons in 2000.[43] Finally, imports of hot-rolled bar from Canada were stable relative to domestic production over the five-year period, increasing by less than two percentage points, while the ratio of imports from all countries to U.S. production nearly doubled, increasing from 6.6% in 1996 to 12.8%

[42] See id.

[43] See id.

in 2000.[44] All these facts argue in favor of the President determining that imports of hot-rolled bar from Canada are not contributing importantly to serious injury or threat thereof, and thus should be excluded from any safeguard action.

Likewise with respect to cold-finished bar, although the Commission's data suggests that Canada has held a large share of total imports over the most recent three-year period,[45] Canada did not contribute importantly to injury or threat of injury to the domestic industry because the growth rate of imports from Canada was appreciably lower than the growth rate of total imports during the period in which an injurious increase may have occurred.

During the past five calendar years, total imports of cold-finished bar from all countries increased in the periods 1996 to 1998 by 32.34%, then dropped from 1998 to 1999, increasing again in 2000 by 33.62%. During those same two growth periods, imports from Canada grew by only 4.5% and 0.7% respectively, a far lower growth rate than total imports. The respective growth rates over the entire five year period, 1996 to 2000, are also disparate: 19.54% for Canada versus 52.69% for all imports.[46]

As to the change in import share of cold-finished bar accounted for by Canada, it has actually declined over the past five years, from 32.6% in 1996 to 25.5% in 2000.[47]

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[44] See id.

[45] See Steel, Vol. II, Table at LONG-16.

[46] See id.

[47] See id.

The Commission majority again ignored the statutory standard in finding that Canadian imports of cold-finished bar "contributed importantly" to serious injury. They relied on Canada's "elevated share of the market"and the fact that "Canada accounted for such a large percentage of total cold-finished bar imports" in support of their finding. They made the same mistake that they did with respect to hot-rolled bar. The test is not Canada's proportionate share of either the U.S. market or total imports, but the relative change (growth) in its import share compared with that of total imports. Naturally, Canada's share of the market is high because of the integrated North American market. The NAFTA recognizes this fact, and thus uses relatively high growth rates as the criterion for determining whether imports from Canada are "contributing importantly" to serious injury. The majority also relied on the fact that "imports from Canada increased during each full year of the period examined..."[48] Annual increases in and of themselves are not evidence of injury under U.S. law (and the NAFTA rules) because such increases are expected; the law requires a showing that the growth rate of such increases are appreciably higher than the growth rate of all imports before a determination can be made that the NAFTA imports are contributing importantly to serious injury. The majority's finding should be rejected because it is not based on the law.

The Commission relied heavily on pricing data to support the finding of serious injury from total imports, but the data with respect to Canadian imports do not track in all respects those recited by the

[48] Steel, Vol. I at 114.

Commission.[49] As with the pricing data for hot-rolled bar, the analysis does not hold up with respect to Canadian imports.

As further proof that Canadian imports of hot-rolled bar and cold-finished bar were fairly priced, we point again to the testimony of Paul Darling, Corey Steel ("we see no evidence that Canadian imports are being offered in our market at prices lower than those sought by domestic producers...")[50], and the post-hearing brief on injury of the Minimill 201 Coalition (Long Products).[51] How could the NAFTA criterion of "contributing importantly" to serious injury be met when the most knowledgeable sources - the domestic industry spokesmen themselves - say that Canadian imports are not contributing at all to injury?

Using the correct NAFTA standard, given the relatively much lower growth rate of Canadian imports compared with other imports of cold-finished bar, the President should find that they do not contribute importantly to serious injury, or threat thereof, to the domestic industry, in accordance with section 311(b)(2) of the NAFTA Implementation Act.

III. The NAFTA Requires the President to Give Compensation To Canada Immediately

NAFTA Article 802(6) states as follows:

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[49] Steel Vol. I at 107-114 compared with Vol. II, Table LONG-92 at LONG-106.

[50] Tr. Remedy at 504-505.

[51] Post-hearing brief on injury, Vol. 5, Exh. 5.

> The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Unlike the general GATT compensation provision in a global safeguard action, the NAFTA provision quoted above applies regardless of the length of time of the relief program. Thus, if the United States were to include imports from Canada in the relief program, the United States would be required under NAFTA Article 802(6) to provide mutually agreed trade liberalizing concessions having substantially equivalent effects, which in this case would most likely have to be restrictions on U.S. imports into Canada, since if additional duties are imposed by the President, adding to the cost of Canadian steel, such steel will probably be so non-competitively priced it will not be imported. If compensation cannot be agreed upon, Canada can take retaliatory action against imports from the United States.[52]

IV. Canada, Like the United States, Does Not Have Excess Steel Making Capacity

[52] NAFTA, Article 802.6.

When President Bush responded to the U.S. steel industry's cry for help by, *inter alia*, requesting a Section 201 "safeguards" investigation, the letter to the Chairman of the U.S. International Trade Commission from U.S. Trade Representative Robert B. Zoellick noted that the President's initiative included negotiations "to reduce excess global steel capacity."[53] As the Administration deliberates on what remedies it will employ to assist the steel industry's adjustment to import competition, it should take note that Canada, as well as the United States, is one of the few steel producing countries that does not have excess capacity - and is, in fact, unable to fully meet national needs. This is yet another reason why members of the U.S. steel industry have maintained throughout these proceedings that Canada is not part of the problem.

Conclusion

The President should exclude imports of hot-rolled bar and light shapes, and cold-finished bar, from any action taken with respect to hot-rolled bar and light shapes and cold-finished bar imports generally.

[53] Letter to The Honorable Stephen Koplan from Robert B. Zoellick, June 22, 2001, found in http://dockets.usitc.gov/eol/public.